

Chapter 15

Agreements secured on land



15.1 Application

- 15.1.1

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This chapter applies to:

(1)

a *firm* with respect to *consumer credit lending* in relation to *regulated credit agreements* secured on *land*; and

(2)

a *firm* with respect to *credit broking* in relation to *credit agreements* secured on *land*.
- 15.1.2

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Firms which carry on *consumer credit lending* or *credit broking* should comply with all *rules* which apply to that *regulated activity* in *CONC* and other parts of the *Handbook*. For example, ■ *CONC 7* applies to matters concerning arrears, default and recovery (including repossession) and applies generally, including to agreements to which this chapter applies. This chapter sets out specific additional requirements and *guidance* that apply in relation to *credit agreements* secured on *land* (see ■ *CONC 1.2.7G*). Certain arranging and introducing activities in relation to investment property loans (as defined by article 61A of the *Regulated Activities Order*), *regulated mortgage contracts* and *home purchase plans* are excluded, to the extent specified in article 36E of the *Regulated Activities Order*, from *credit broking*.
- 15.1.3

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Conduct

The financial promotion *rules* in ■ *CONC 3* apply to *firms' financial promotions* concerning *credit agreements* secured on *land*, apart from the extent to which a *financial promotion* or communication concerns *qualifying credit*. ■ *CONC 3.3.1 R* requires *financial promotions* to be clear fair and not misleading; *firms* should take particular care with respect to explaining the nature of the *credit* to be provided and the costs of borrowing.
- 15.1.4

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A *firm* must make clear in advance the purpose of any visit off trade premises (which has the same meaning as in section 48 of the *CCA*) at which the *customer* may enter into a *regulated credit agreement*.
- 15.1.5

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In good time before a *credit agreement* is made and, where section 58 applies, before an unexecuted agreement is sent to the *customer* for signature a *firm* must:

(1)

disclose key contract terms and conditions of the prospective *credit agreement*;
- CONC 15/2
- www.handbook.fca.org.uk
- Release 39 ● Aug 2024

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| | | <ul style="list-style-type: none"> (2) disclose any features of the prospective <i>credit agreement</i> which carry a particular risk to the <i>customer</i>; (3) inform the <i>customer</i> of the consequences of missing payments or of making underpayments, including the imposition of default charges, the risk of repossession of the <i>customer's</i> home, in relation to the <i>customer's</i> credit record and of inability to obtain <i>credit</i> in the future; (4) inform the <i>customer</i> about the circumstances in which the rates or charges may change, in particular, if they may be varied at the discretion of the <i>firm</i> or can vary subject to a reference rate of interest; and (5) if the rate of interest can vary subject to a reference rate of interest, other than that of the Bank of England's base rate, inform the <i>customer</i> of the reference rate in question and the rate to be applied. |
| 15.1.6 | G | Where appropriate, the disclosure required by ■ CONC 15.1.5 R should be explained orally to the <i>customer</i> . |
| 15.1.7 | R | <p>Where a <i>firm</i> has reasonable grounds to suspect that the <i>customer</i> does not understand material aspects of the obligations they will take on and the resulting risks, under a <i>regulated credit agreement</i>, the <i>firm</i>:</p> <ul style="list-style-type: none"> (1) must not enter into a <i>regulated credit agreement</i>; and (2) must provide further explanation of any such obligations or risks. |
| 15.1.8 | R | <p>Before a <i>customer</i> enters into a <i>regulated credit agreement</i>, the <i>firm</i> must:</p> <ul style="list-style-type: none"> (1) encourage the <i>customer</i> to read all contractual documentation carefully; (2) take reasonable steps to ensure the <i>customer</i> has understood the nature of the obligations the <i>customer</i> will take on and the resulting risks; (3) encourage the <i>customer</i> to obtain independent advice; and (4) permit the <i>customer</i> an adequate opportunity to seek and obtain such advice. |
| 15.1.9 | G | <p>Before a <i>regulated credit agreement</i> secured on <i>land</i> is entered into:</p> <ul style="list-style-type: none"> (1) the <i>firm</i> should consider the adequate explanations it should give to the <i>customer</i> under ■ CONC 4.2; and <p>[Note: paragraph 3.1 (box) of <i>ILG</i>]</p> |

15.1.10

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In accordance with PRIN 9 (customer: relationships of trust):

- (2) the *firm* is required under ■ CONC 5.2A to carry out a *creditworthiness assessment*.

[Note: paragraphs 1.14 and 4.1 of *ILG*]

- (1) a *firm* must take reasonable steps to ensure the suitability of its advice, which would include acting in the best interests of a *customer* where the *firm* makes a recommendation;
- (2) if it appears to the *firm* that entering into a *regulated credit agreement* secured on *land* is not in the best interests of the *customer*, that fact should be made clear to the *customer*; and
- (3) the *firm* should encourage the *customer* to consider whether the *credit* can be afforded, including in the event the *customer's* circumstances change, for example, through a change in employment or retirement.

15.1.11

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A *firm* must set out the nature and purpose of the fees and charges payable by the *customer*, including any fees or charges payable on the *customer's* default:

- (1) in the *credit agreement*; and
- (2) in any booklet or leaflet relating to the agreement.

15.1.12

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Where rates and charges under a *credit agreement* are variable, a *firm* must:

- (1) before entering into the agreement, explain to the *customer* the consequences of such variations on the amount of periodic instalments payable and on the *total amount payable*;

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| | | <ul style="list-style-type: none">(2) only increase rates or charges to recover genuine increases in costs of the <i>firm</i> which have an effect on the <i>credit</i> provided under the agreement; and(3) explain to the <i>customer</i> before changing any rate or charge under the agreement. |
| 15.1.13 | R | <p>Where a <i>customer</i> wishes to make repayments ahead of time:</p> <ul style="list-style-type: none">(1) a <i>firm's</i> charges for early repayment must be fair and reasonable and must reflect the <i>firm's</i> necessary costs in relation to such repayment;(2) the <i>firm</i> must fully explain the process and costs involved in early repayment; and(3) the <i>firm</i> must allow the <i>customer</i> to make part early repayment of the capital. |
| 15.1.14 | G | [deleted] |
| 15.1.15 | R | <p>If a shortfall remains following the sale of a property, the <i>firm</i> must notify the <i>customer</i> as soon as possible of the amount of the shortfall.</p> |

